

To: Harvey, Judy (ENRD)[Judith.Harvey@usdoj.gov]
Cc: Lisa Mador[lhm28843@sbcglobal.net]; Jack Silver[warrioreco@yahoo.com]
From: Jerry Bernhaut
Sent: Wed 6/25/2014 5:04:46 PM
Subject: Re: Calif. River Watch v. City of Willits - Case No. 13-03395 VC
[Willits Final Agreement - CRW signature.pdf](#)

Judy,

River Watch agrees to withdraw the stipulation for dismissal to allow the 45 day review period for DOJ. The Settlement Agreement is attached. We have not yet received the testing protocols but will send them to you as soon as we receive them.

Jerry Bernhaut
Attorney for CRW

On Wednesday, June 25, 2014 7:06 AM, "Harvey, Judy (ENRD)" <Judith.Harvey@usdoj.gov> wrote:

Jerry,

The Clean Water Act provides that “[n]o consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.” 33 U.S.C. 1365(c)(3). See also 40 C.F.R. 135.5. As we have stated to you on numerous occasions and reiterated in our letter of October 3, 2013 to all counsel in this case, the term “consent judgment” in the Clean Water Act citizen suit provision has a broad meaning, and encompasses all instruments entered with the consent of the parties that have the effect of resolving any portion of the case. A dismissal of the case with prejudice, including voluntarily, falls within the scope of this language.

Your failure to provide the United States with a copy of the proposed consent judgment is difficult to understand given previous matters in which this issue has come up. For example, in Northern California River Watch v. Honeywell Aerospace, et al, 11-cv-03723 (N.D. Cal.), the Court dismissed the case before the United States’ 45-day review period had expired. In a letter to me, you apologized for the premature dismissal, and indicated that you were considering putting in language into future settlements to prevent this from occurring and ensure adequate time for United States review of consent judgments.

In this case, it appears that you filed a stipulation on June 20 for dismissal with a proposed order, but the Court has not yet signed the order. We ask that you withdraw the stipulation and proposed order to allow for United States 45-day review of this settlement. In the meantime, please also send us a copy of the settlement, as well as a copy of the protocols that you reference in your letter.

Regards,
Judy Harvey

From: Lisa Mador [mailto:lhm28843@sbcglobal.net]
Sent: Tuesday, June 24, 2014 5:18 PM

To: Harvey, Judy (ENRD)

Cc: Steven Mitchell; James Lance; Jerry Bernhaut; Jack Silver

Subject: Calif. River Watch v. City of Willits - Case No. 13-03395 VC

Please see attached correspondence from Jerry Bernhaut. Thank you.

Lisa H. Mador

Legal Assistant

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